"The Dispensation of Legal Aid Services in India: A study with Special Reference to Shimla City."

From

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INTRODUCTION

1.1 Introduction

Legal aid or help should be available to anybody on the road, workplace and even in his/her house. Due to multitude of factors such like illiteracy, destitution, absence of knowledge of rights etc. The Indian constitution has put in place a legal system which endeavors to protect the rights of everyone. Under Constitution law it is the primary responsibility of the state to maintain law and order so that the citizen can enjoy peace and security. Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial. A number of delivery models for legal aid have emerged including duty lawyers, community legal clinics and the payment of lawyers to deal with cases for individuals who are entitled to legal aid. The concept of legal aid is in the form of Article 39A into our constitutional frame work. Hence legal aid is not a charity, but is a constitutional obligation of the state and right of the citizens. The legal aid strives to ensure that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the weaker section of the society. It is the duty of the state to see that the legal system promotes justice on the basis of equal opportunity for all the citizens.

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It must therefore arrange to provide free legal aid to those who cannot access justice due to economic and other disabilities. In different states legal aid schemes were floated through Legal Boards, societies and law department. The contributions of Justice Krishna Iyer towards the development and incorporation of the concept of legal aid in the Indian legal system has been tremendous. Legal aid has a close relationship with the Welfare state and the provision of legal aid by a state is influenced by attitude towards welfare. There has been a great change in the minds of the people of the nation towards the concept of legal aid from a responsibility of the accused to find a lawyer and seek help to a fundamental right of an accused to seek free legal aid. Even after all the efforts of statute to make the concept of legal aid flourish in our country, the rest goals have not been achieved. There are many obstacles to the successful application of legal aid in the country. People are still not aware of their basic rights due to which the legal aid movement has not achieved its goal yet. The poor people, who are not that fit socially and economically do not know about their legal rights and their legal procedure to solve disputes. They either just gives up on their muscle power. This kills the legal system of the country and the citizens lose faith in the administration of the law of the country. The poor and the unaware people being kept in the dark and not given justice are equal to the law and rights being unfair to all the citizens.

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Any person who fits into the following criteria is entitled to free legal aid.

- A member of the scheduled class or tribes.
- A poor person one whose annual income is not more than 50000 for cases in the Supreme Court and 25000 for other courts.
- A victim of human trafficking or a beggar.
- Mentally or physically disabled person.
- A woman or a child.
- A victim of any disaster or unwanted accidents.
- An industrial workman.
- A person facing a charge which may result in imprisonment.
- Anyone who is not able to hire a lawyer for reasons like poverty.

There are many educated people who are either too lost to start the legal procedures or are simply unaware of their legal rights and thus suffer. Thus the need of the hour is that we need to focus on effective and proper implementation of the laws. A nationwide network has been envisaged under the Act for providing legal aid and assistance. National Legal Service Authority is the apex body constituted to lay down policies and principles for making legal services available under the provision of the Act and to frame most effective and economical schemes for legal services. In every state a State Legal Services Authority is constituted to give effects to the policies and directions of the central authority and to give legal services to the people and conduct Lok Adalats in the state. District Legal Service Authority is constituted in every district to implement legal

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aid programs and schemes in the district. Taluk Legal Services Committee is also constituted for each of the Taluk/ Mandal to co-ordinate the activities of legal services in the Taluk and to organize Lok Adalats.

1.2 Statement of the Research Problem

It is evident that the right to legal aid is an enforceable right in Indian jurisprudence at least in theory, has appropriate schemes and means of implementation. However one of the most crucial deficiencies which emerge in the current scenario is that of the role played by the lawyer. Quality lawyer is the need of the hour but is unfortunately not always available. The brightest mind in the profession is often unavailable to devote time and effort to legal aid because of the law remuneration involved. There is inadequate awareness regarding the rights guaranteed to needy persons. The poor and deprived people often remain so and are unable to seek redress simply because they are not at all aware of the rights guaranteed to them and the remedies that are available and which forum is to be approached.

The language of the legal system in India is mostly English. How then we can expect those who are unavailable to understand or speak this language, to be aware of the rights they have? One of the problem areas that have always held out as the sore thumb in lack of funds.

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1.3 Review of Literature

In order to enhance knowledge and experiences for in depth understanding of the role of legal aid in India extensive literature search and review has been made. Literature reviews includes review of books, articles and commentaries on right to legal aid and good governance. Number of judgments delivered by Supreme Court as well as various high courts has been gone through by consulting law journals which have direct bearing and effect upon this topic. In the context of the present study it is important to take cognizance of some of the studies, related to the research problem.

Dr. Kailash Rai (2012) in his study "Public Interest Lawyering, Legal Aid and Para Legal Services" laid emphasis on the role of legal aid in societies and discusses various rules and authorities over it. He also explained some of the significant features of Public Interest Litigation, Legal Aid, Lok Adalat and permanent Lok Adalat in India.

Ajay Gulati (2008), in his study "Public Interest Lawyering, Legal Aid and Para Legal Services" emphasis on how legal aid is useful to strengthen the Indian democracy. The study also explains that the Public Interest Lawyering has a tremendous role to play in correcting socio economic imbalance in the society and provide justice to the poor and weaker section of the society.

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Dr. B L Wadehra (2012), In his study "Public Interest Litigation" emphasis on how legal aid is an important pillar of just icing system and how the poorest of the poor, the illiterate, women, SC, ST, OBC & handicapped by ignorance indigence can get the justice on the violation of their rights.

Monika Ahuja (2011), In her study " A Legal Overview of Public Interest Litigation and Judicial Activism" emphasis on how the PIL and legal aid provide an effective remedy to the poor, weak and illiterate person to enforce their rights and interest. In her study author also explains the judiciary active role in legal aid and PIL has created a climate of transparency and engendered a sense of accountability in public functionaries.

B.R Sharma (2009) In his study " Legal Aid and Legal Education in India" mainly emphasis on the institutions of law- colleges and legal aid clinics can play a vital role in providing justice to the poor and neglected fellow – citizen of our country. The paper also focuses on that the legal aid should be made an essential component of legal education in all colleges and universities. Moreover legal aid clinics should be established with adequate infrastructural facilities.

Y. Srinivasa Rao (2012) "Right to free Legal Aid" emphasis on how to free legal aid is useful to strengthen the Indian democracy. The study also explains the

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duties of the police and the courts regarding legal aid and when such legal aid can be rejected.

B.R Sharma and Sunil Chhabra (2009), in his study "Legal Aid in Australia: Some Reflections" explain that in Australia legal aid is receiving adequate attention of the state though its implementation and administration is not uniform throughout the country. His study touches the two important concepts i.e "Flying Lawyer" and main sources of legal aid funds.

Prativa Panda (2010), Legal Aid in India- an Overview in this paper the author has analyzed the approach and role of the judiciary in regard to rights to legal aid. After discussing the role of judiciary, the author discusses the constitutional right and guidelines of the Legal Services Authority Act, 1987 to provide free legal aid to the poor.

Kiran Suresh Marathe and Nitesh Dharamdas Chaudhari (2016) in his study "Constitutional and Legal Framework of the right to free legal aid in India" explore the constitutional and legislative provision for legal aid. It also explains what are the various problems in the way of legal aid, reason for not awareness of the poor person regarding legal aid and why machinery of legal aid is not properly functioning in our society.

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Mamta Rao,(2004) "Public Interest Litigation, Legal Aid and Lok Adalat, In this book the author explain the concept legal aid and Lok Adalats and the need for these concepts has been also highlighted. The amendment in 2002 introduces the concepts of permanent Lok Adalat in public utility services is also explained.

N.V Paranjape (2006) Public Interest Litigation, Legal Aid and Services, Lok Adalats and Para Legal Services In this book author explains the historical background of legal aid which is based on the principle of natural justice. The author has also endeavored to incorporate all the legislative enactments along with latest amendments and the important relevant decisions related to legal aid. In this book author also explained the International Perspective related to legal aid.

1.4 Research Questions

The principle questions which the present study has raised for consideration are:

I. What are the responsibilities of the Legal services Authorities related to legal aid in India?

II. What is the accountability of other authorities towards Legal Services Authorities?

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III. What is the role of NGO'S in the program of Legal aid in India?

IV. What are the role of Lok Adalat and its statutory recognition?

V. What is the role of judiciary and Legal Services Authorities in developing conciliatory forum judicial hunch?

VI. Whether Legal aid laws in India are flanked.

1.5 Hypotheses

On the basis of the forgoing discussion, the following hypotheses related to the present study have been formulated.

I. The main aim of research is to find out whether the legal aid services are properly delivered to the needy and poor person or not.

II. The judicial approach on legal aid is mixed.

After studying the work, function and performance of various legal services authorities as well as legal aid services providers in H.P states, it is found that the intention of the legislature behind forming the legal aid Act has been fulfilled to a great extent though some more things still can be done.

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